

**ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
JUNE 16, 2011**

Town of Bedford  
Bedford Town Hall  
Lower Level Conference Room

**PRESENT:** Jeffrey Cohen, Chair; Jeffrey Dearing, Vice Chair; Angelo Colasante; Kenneth Gordon; Stephen Henning

**ABSENT:** Brian Gildea, Clerk; Carol Amick

**GUEST:** Christopher Laskey, Code Enforcement Director

Mr. Cohen introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members and ZBA assistant introduced themselves.

**PRESENTATION:** Mr. Dearing read the notice of the hearing.

**PETITION #026-11** – Brett Leida and Vanessa Kirchner-Leida, 25 Woodland Road, seek a Special Permit in accordance with Section 7.1.2 and Section 7.1.4 of the Zoning By-Law to construct second floor addition within the front yard setback.

Mr. Leida introduced himself and his wife. He explained that they have been living at the house on 25 Woodland Road for nine years, noting that they have three children and are rapidly outgrowing the 1,658 square foot space. He said that they like the neighborhood and do not want to move, so they would like to build a second floor addition; since the house is pre-existing non-conforming, this addition would intensify that non-conformity and therefore needs a Special Permit. Mr. Leida stated that there is plenty of precedent in this area of Bedford to have such an addition, and he and his wife have even made a list of ten houses in the vicinity which have had second floor additions. He explained that they have spoken with all their immediate abutters, none of whom have any problem with this addition; he circulated a letter to the Board members which has signatures from all five of these neighbors (see attachment). Mr. Cohen read this letter into the record.

Mr. Leida explained that their architect is also present tonight, and he is the same architect who designed a mudroom addition for them in 2008, for which they received a Special Permit from this Board. He said that the intent of the design for the addition is to stay consistent with the existing structure and have it blend in as well as possible. He talked in more detail about the plot plan and the dimensions of the existing structure along with the proposed addition.

Mr. Leida stated that the only other area for which they need relief is for the porch overhang; they currently have a small roof over the front steps and they would like to change it to a gabled roof with columns. Mr. Cohen asked how much farther out this new

roof would protrude. Mr. Leida replied that he wasn't sure whether it even protruded out any more at all, but if it did it would not be more than a foot. He passed around a photograph showing the current roof over the front steps.

Mr. Colasante discussed the plot plan in more detail with the applicant and said it appears that the new addition will be entirely within the existing footprint, with the exception of the roof over the front steps and the second floor cantilever. Mr. Leida said that was correct.

Mr. Henning asked whether the applicants knew of any abutters who were not in support of this application. Mr. Leida said he did not know of anyone who had a problem with it.

Mr. Cohen opened the hearing to the public. With no comments or questions from those in attendance, Mr. Cohen closed the public hearing.

### **DELIBERATIONS:**

Mr. Dearing said this is a very straightforward application, as the addition is only going straight up. Mr. Cohen said that the only section of the addition that is being pushed out any farther than the existing structure is the cantilever and the extension of the roof over the front steps, which are both de minimis. He said that the two conditions of a Special Permit are that the project is not injurious or detrimental to the neighborhood and is in keeping with the intent and purpose of the By-Law. He said he feels this project meets those requirements. The other Board members agreed.

### **MOTION:**

Mr. Dearing moved to grant to Brett Leida and Vanessa Kirchner-Leida, 25 Woodland Road, a Special Permit in accordance with Section 7.1.2 and Section 7.1.4 of the Zoning By-Law to construct second floor addition within the front yard setback, substantially as shown on Exhibits A, B, and C.

Mr. Colasante seconded the motion.

Voting in favor: Cohen, Dearing, Colasante, Gordon, and Henning

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Cohen explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

**PRESENTATION:** Mr. Dearing read the notice of the hearing.

**PETITON #027-11** – Jeffrey and Andrea Yepez, 4 Hayden Lane, seek a Special Permit in accordance with Section 7.1.2 and Section 7.1.4 of the Zoning By-Law to allow a previously constructed addition to remain with the minimum side and front yard setbacks.

Mr. and Ms. Yepez introduced themselves and explained that they are here to request a Special Permit for a garage addition that was built in 2007. Mr. Yepez stated that they purchased the home in 2004 and in 2007 constructed a garage on the east side of the lot, in what they believed at the time was within the side yard setback; they came to realize later, however, that the plot plan under which the Building Permit was issued was inaccurate, and the side yard setback was only 10.4 feet at the closest corner and 13.2 feet at the farthest corner, instead of the required 15. He said that the house is currently 29 feet from the front property line, so it is already non-conforming, therefore requiring a Special Permit for this project.

Mr. Dearing asked for confirmation that this addition has already been constructed. Mr. Yepez said that was correct, and that it was built in 2007 with all the appropriate Town approvals. Mr. Dearing asked why the Board is reviewing this now, if everything has already been built. Mr. Yepez replied that the Code Enforcement Director, Christopher Laskey, requested that they come before the Board to set the record straight and get the necessary approval to make this legal and finalized.

Since Mr. Laskey was in attendance at the meeting, Mr. Cohen asked him to give a summary of the events that led to this hearing. Mr. Laskey greeted the Board and explained that the Local Building Inspector, Daniel Sullivan, issued a Building Permit in 2007 to build a garage with an accessory apartment above it, all based on an original plot plan that, as Mr. Yepez noted, later turned out to be inaccurate. Mr. Laskey admitted that the plot plan was not stamped and they believed it was done by a civil engineer, although they later realized it was done by the owner. He said that the immediate abutters contacted the Code Enforcement Department with concerns about the location of the addition, and after doing a site visit the inspectors requested a formal instrument survey for the property. It was at that time that they realized the original plot plan was off by several feet and that the new addition did not comply with Bedford's setback requirements. Mr. Laskey explained that the deck on the side of the house is actually just a three and a half foot walkway, and does not count as part of the setback because it is a required means of egress.

Mr. Colasante asked whether a Zoning Board decision addresses any wetlands issues. Mr. Cohen said that it is two separate issues, zoning and wetlands, and each Commission will have a decision that addresses each issue. Mr. Yepez noted that they will be going to the Conservation Commission soon to address questions about wetlands and buffer zones.

Mr. Gordon asked about the timeline of events regarding this project. He said it appears that in August of 2007 the applicants received a Building Permit by providing this original unstamped plan. Ms. Yepez confirmed that that was correct. Mr. Gordon said there was then a request for an as-built; he asked whether that as-built was provided.

Mr. Yepez said that it was not provided right away, as he had been transferred to Virginia for his work with the Air Force in the meantime and was not even at the property to get this kind of thing taken care of; he added that a tenant rented the property for one year while they were away. Mr. Gordon said that even after the Yepezes returned, there was still a long time before they got the BSC Group survey done. Mr. Yepez said that several other personal situations arose during that time, including his mother's sickness, so the plot plan unfortunately was not his number one priority; he added that a plot plan is also extremely expensive, so they needed to have the money in place to have it completed.

There was discussion about the construction of the decks and the dimensions of the decks on the plot plan.

Mr. Gordon asked whether the applicants had any communication with their abutters at the time the garage was permitted and built. Ms. Yepez said they did, and they received all positive feedback at that time.

Mr. Colasante noted that the original plot plan does not show the narrow deck used as egress; he asked how that deck came about, since it wasn't originally proposed. Mr. Laskey explained that his understanding is Mr. Sullivan required the deck or at least a structure like it, because any accessory apartment above the garage needed a primary means of egress. The Board members talked with Mr. Laskey about the egress and how the dwelling was built. Mr. Colasante asked for confirmation that the Zoning Board has no say in the location of the deck because it is an egress. Mr. Laskey said that is correct, so the only structure needed for this Special Permit is the garage itself.

Mr. Cohen asked whether the decks were built at the same time as the addition. Mr. Yepez replied that they were built in 2008, after the addition, and were also permitted through the necessary channels.

Mr. Cohen opened the hearing to the public.

Annie Nield, the owner of 6 Hayden Lane, introduced herself and her husband, Laurent Chesnel. She said they purchased their house in May of 2009 and had some concerns about the way the house and the property line were understood. She said that it wasn't long after they bought the house that the Yepezes cut down some flowers that Ms. Nield believed was on her own property; this prompted them to get their own survey, which confirmed that the structures were much closer than anyone originally thought. She said she is concerned that this garage addition will have an accessory apartment over it and that the primary means of egress will be right at the side of the property facing them, which seems like an invasion of privacy. She added that they may not have bought their house if they had realized that a house with accessory apartment would be so close to them.

Mr. Chesnel said he had some questions and comments, both for the Board and for the applicants. He said his first question was: How long has the Town and the ZBA known about this violation? Mr. Laskey replied that the Zoning Board only found out about it

recently, within the last two weeks, once this application was ready to be filed; he said the Bedford Building Department has known about it for approximately two years, and he has been under a verbal agreement with the Yepezes during that time that they would get a new plot plan to establish the line and determine whether the addition was within the setbacks. He said it unfortunately took the applicants longer than he expected to get that plot plan surveyed. Mr. Chesnel asked Mr. Laskey whether he had been in touch with the applicants during that time. Mr. Laskey said that he had been in contact with them verbally twice, but after there seemed to be no progress, he was forced to write them a letter requesting them to take care of the situation.

Mr. Chesnel said his second question to the Yepezes is: if they were aware of this situation, why did they cut the forsythias down that ran along the property line? Mr. Yopez said that he never would have cut the forsythias down if he had realized they belonged to their neighbors. He said he cut the bushes down because he is allergic to forsythias, and he was working on a faulty assumption of the boundary lines due to the original plot plan. He assured Mr. Chesnel that nothing like that would ever happen again.

Mr. Chesnel commented that he is surprised one can be allowed to change the slope of one's land for an addition, which seems to be the case here, as the Yepezes' drainage runs onto his property. There was extensive discussion about the drainage and runoff between the two lots. Mr. Cohen said there is language in the Building Code ensuring that builders take care to not allow runoff, and he doesn't believe from the plans that there was any significant change in grading or slope; it appears that the ground was sloped that way to begin with. There was further discussion about the stormwater and runoff between the two properties, specifically in regard to the drainage pipe on the Yepezes' lot.

Mr. Chesnel said he would also like the Yepezes to agree that the property line on the two plot plans match, so there will be no questions about the boundary lines in the future. Mr. Yopez agreed that the two plot plans match and the corner of the property line is the iron rod found by both surveyors, so there is no discrepancy. He promised to respect that boundary line in the future.

Mr. Colasante asked whether the addition was originally intended to be an accessory apartment. Mr. Yopez replied that it was originally intended for that purpose; it was supposed to be an accessory apartment for his mother, who has since passed away.

There was discussion about parking and entry for anyone potentially living in the accessory apartment, along with discussion about the sewer easement between the two properties, as shown on the plot plan.

With no further comments or questions from those in attendance, Mr. Cohen closed the public hearing.

**DELIBERATIONS:**

Mr. Cohen commented to the other members that the Board has had similar circumstances to this in the past, and what the Board typically does is consider what they would have done if nothing had ever been built. He noted that there have been times when it has worked out well for the applicants and Special Permits have been granted, and there have been other times when the Board decided they would not have granted a Special Permit for the project and have required applicants to cut sections off an addition.

Mr. Dearing said that this is a pre-existing non-conforming lot, so the addition would require a Special Permit. He said that he always tries to respect and follow the intent of the Zoning By-Law, and it is clear that the By-Law's intent is to have 30 feet between structures, since the side yard setback is 15 feet; and since there is a 20-foot easement between these two properties, even though the garage addition is built into the setback, there is still 30.4 feet between the structures. Therefore, he feels this project is in keeping with the intent and purpose of the By-Law.

Mr. Colasante said it seems that this was a case of some unfortunate oversights, both on the part of the homeowners and the Building Department. He said that the Building Inspectors are human and can occasionally make mistakes, and the same goes for the homeowners, but he doesn't see anything that can be done at this point to correct it. He agreed with Mr. Cohen and Mr. Dearing that this is a Special Permit that probably would have been granted to begin with, although he may have asked for some kind of screening to help shield the addition from the view of the homeowners; but on the other hand, the addition is very high so he doesn't know what kind of shielding could even have been put in place to begin with.

Mr. Gordon said that mistakes were indeed made by both parties, but he doesn't see that there was a lot of diligence by the part of the homeowners to make sure those mistakes got corrected; they did not act until Mr. Laskey had to force the issue. He said that even with that being the case, however, this addition isn't very detrimental to the neighborhood and is essentially in keeping with the intent and purpose of the By-Law, and although the narrow deck could be questionable, it is also necessary under law.

For clarification purposes, Mr. Cohen asked the Yepeszes whether anything else could be done to extend the existing drainage pipe to keep any drainage runoff on the property. Mr. Yopez said he would certainly be happy to look into that. Mr. Cohen said he would like to see some wording in the motion stating as much.

Mr. Cohen said that 10.4 feet and 13.2 feet for side setbacks are not yet into what he might think of as problematic or burdensome. He said that if this had come before the Board before it was built he would have supported it and he can support it now. Mr. Dearing agreed.

Mr. Henning also agreed, noting that perhaps some kind of screening or trees could be put in place to at least help shield the addition. He encouraged the applicants to look into

working that out with the abutters.

**MOTION:**

Mr. Dearing moved to grant to Jeffrey and Andrea Yepez, 4 Hayden Lane, a Special Permit in accordance with Section 7.1.2 and Section 7.1.4 of the Zoning By-Law to allow a previously constructed addition to remain with the minimum side and front yard setbacks, as substantially shown on Exhibit A, and contingent upon extending the existing drainage pipe as required to keep storm drainage on the property.

Mr. Henning seconded the motion.

Mr. Cohen asked whether there was any discussion on the motion. For clarification purposes, Mr. Gordon asked the applicants whether the second floor is finished on the outside. Mr. Yepez said that it is.

Mr. Colasante asked what would happen if the Conservation Commission finds the movement of the drainage pipe unacceptable. Mr. Cohen said that Con/Com has jurisdiction over any wetlands or stormwater issues, so they have the ability to overrule the wording of the motion if they find it necessary, but this motion will at least reflect that the Zoning Board attempted to help amend that issue.

Voting in favor: Cohen, Dearing, Colasante, Gordon, and Henning

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Cohen explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision and the plan recorded at the Registry of Deeds, and they can close the loop on this issue.

**BUSINESS MEETING:**

Mr. Cohen said that the minutes of the April 28 and May 12 meetings are ready for approval, so if the Board members have all had a chance to read those minutes, he would like a motion to approve them.

**MOTION:**

Mr. Dearing moved to accept minutes of April 28, 2011 and May 12, 2011.

Mr. Colasante seconded the motion.

Voting in favor: Cohen, Dearing, Colasante, Gordon, and Henning

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

**MOTION:**

Mr. Dearing moved to adjourn the meeting.

Mr. Colasante seconded the motion.

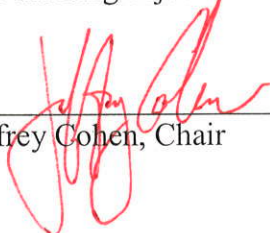
Voting in favor: Cohen, Dearing, Colasante, Gordon, and Henning

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

The meeting adjourned at 9:20 PM.

  
\_\_\_\_\_  
Jeffrey Cohen, Chair

7/28/11  
\_\_\_\_\_  
Date

Respectfully Submitted,

Scott Gould  
ZBA Assistant

Attachments:

- Letter signed by five abutters to 25 Woodland Road